

B & W Service Industries, Inc. and Laborers' International Union of North America, AFL-CIO.
Case 33-CA-10230

May 31, 1994

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On November 26, 1993, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering B & W Service Industries, Inc., its officers, agents, successors, and assigns, to make whole certain of its unit employees for loss of earnings and benefits or other expenses suffered as a result of the Respondent's failure to pay contractual wages, shift premiums and accrued vacation pay, to make required contributions to fringe benefit funds, and to remit union dues deductions in violation of the National Labor Relations Act.²

A controversy having arisen over the amount of backpay due discriminatees, on March 18, 1994, the Regional Director for Region 33 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.³

¹ 313 NLRB No. 62 (Nov. 26, 1993) (not reported in Board volumes).

² A copy of the compliance specification was sent to the Respondent at its Culver City, California business address by certified mail, return receipt requested, and by first class mail. A copy was also sent to its Rock Island, Illinois business address by certified mail, return receipt requested. The copy of the compliance specification which was sent to the Respondent's Culver City, California address was returned to the Regional Office marked "unclaimed." The General Counsel alleges, with supporting documentary proof, that the copy which was sent by certified mail to the Respondent's Rock Island, Illinois business address was actually received. The Respondent's refusal or failure to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). The failure of the Postal Service to return the copy which was sent by regular mail indicates actual receipt of these documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987). Therefore, we find that the Respondent was properly served the compliance specification.

³ Although the General Counsel did not send a reminder or warning of the consequences of failing to file an answer to the Respondent, we find that this does not warrant denying the General Counsel's Motion for Summary Judgment. See *M. Jacobs & Associates*, 312 NLRB No. 13 fn. 1 (Sept. 10, 1993) (not reported in Board volumes); and *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

On April 22, 1994, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On April 29, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause being shown for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the amounts due the discriminatees, the Union, and the funds are as stated in the compliance specification and we will order payment by the Respondent of these amounts, plus, where appropriate, interest accrued on these amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, B & W Service Industries, Inc., Inglewood, California, its officers, agents, successors, and assigns, shall make whole the individuals and make the contractually required contributions to the Union, the Laborers' National Industrial Pension Fund,

and the Northern Illinois Annuity Fund by paying them the amounts set forth in the compliance specification, plus delinquency assessments, with interest on the dues owing to the Union and on the backpay and reimbursements to employees to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws.

Dated, Washington, D.C. May 31, 1994

James M. Stephens,	Member
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Dennis M. Devaney,	Member
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Charles I. Cohen,	Member
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(SEAL)

NATIONAL LABOR RELATIONS BOARD